



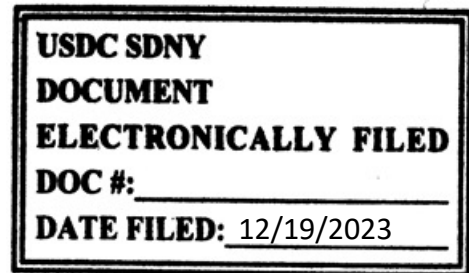
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006-4061

T: +1 202 383 5300
F: +1 202 383 5414
omm.com

File Number:

December 18, 2023

VIA ELECTRONIC DELIVERY AND COURT FILING



The Honorable Katharine H. Parker
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 750
New York, New York 10007

Re: United States of America v. Anthem, Inc., 1:20-cv-02593-ALC-KHP

Dear Judge Parker:

We represent Defendant Anthem, Inc. in the above-captioned matter. We write concerning a dispute between the parties that we ask the Court to address at the case management conference that is currently scheduled for January 9, 2024. Specifically, Anthem requests that the Court address the propriety of Plaintiff's Third Set of Requests for Production ("RFPs"), which seek documents concerning Anthem's compliance with certain alleged Medicare Advantage program requirements published by the Centers for Medicare & Medicaid Services ("CMS") that purportedly specify the diagnosis codes that Medicare Advantage Organizations ("MAOs") may submit to CMS for risk-adjustment payments for beneficiaries. The alleged requirements that are the subject of Plaintiff's Third Set of RFPs are distinct from the Medicare Advantage program requirements specifying whether a particular diagnosis code is documented adequately in the beneficiary's medical record, which is the focus of Plaintiff's Amended Complaint. Plaintiff contends that these new discovery requests seek documents relevant to the claims for relief alleged in the Amended Complaint. Anthem submits that the documents responsive to the Third Set of RFPs are irrelevant to the claims and defenses in this matter. Even if such information has marginal relevance to the case, it is substantially outweighed by the undue burden on Anthem of having to search for and review large volumes of additional documents, as well as by the disruption to this case's progress that would result from broadening the Medicare Advantage program requirements at issue in this litigation. Thus, Anthem contends that the Third Set of RFPs are not proportional to the needs of the case under Federal Rule of Civil Procedure 26, even if they seek documents that have some marginal relevance. The parties have met and conferred regarding this dispute on multiple occasions, most recently on December 15, 2023, and are now at an impasse.

Consistent with Rule II(c) of the Court's Individual Practices and Procedures, Anthem respectfully requests that the parties be authorized to file position statements of no more than three pages by Thursday, January 4, 2024. Anthem submits that these position statements would be helpful to the Court by allowing the parties to explain the relevant background to these discovery requests, their recent meet-and-confer discussions, and their rationales for their respective positions in advance of the January 9, 2024 case management conference.



Plaintiff's Position on Anthem's Request for Briefing. Plaintiff agrees that the parties are at an impasse on this issue and agrees with the request to submit three-page position statements on January 4, 2024.

Anthem thanks the Court for its consideration of this request.

Request GRANTED. Parties are permitted to file position statements of no more than three (3) pages by **Thursday, January 4, 2024.**

SO ORDERED:

A handwritten signature in black ink that reads 'Katharine H. Parker'.

**HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE**

12/19/2023



Dated: December 18, 2023

Respectfully submitted,

By: /s/ K. Lee Blalack, II

K. LEE BLALACK, II, *Pro Hac Vice*
ANWAR GRAVES, *Pro Hac Vice*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
lblalack@omm.com
agraves@omm.com

JAMES A. BOWMAN, *Pro Hac Vice*
ADAM LEVINE, *Pro Hac Vice*
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
Telephone:(213) 430-6000
Facsimile: (213) 430-6407
jbowman@omm.com
alevine@omm.com

DAVID DEATON, *Pro Hac Vice*
O'MELVENY & MYERS LLP
610 Newport Center Drive, 17th Floor
Newport, CA 92660
Telephone:(949) 823-6900
Facsimile: (949) 823-6994
ddeaton@omm.com

HEYWARD BONYATA, *Pro Hac Vice*
JOHN MARTIN, *Pro Hac Vice*
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Telephone: (803) 255-9655
heyward.bonyata@nelsonmullins.com
john.martin@nelsonmullins.com

Attorneys for Defendant Anthem, Inc.

cc: Assistant United States Attorney Jeannette Anne Vargas, Esq.

Assistant United States Attorney Rebecca Sol Tinio, Esq.
Assistant United States Attorney Peter Max Aronoff, Esq.
Assistant United States Attorney Zachary Bannon, Esq.
Assistant United States Attorney Charles Salim Jacob, Esq.
Assistant United States Attorney Adam M. Gitlin, Esq.
Assistant United States Attorney Dana Walsh Kumar, Esq.